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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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KENNETH DINKINS,

Plaintiff,

v.

GERALDINE SCHINZEL,

Defendant[s].

Case No. 2:17-cv-01089-JAD-GWF

**ORDER**

This matter is before the Court on Plaintiff's Motion for Sanctions (ECF No. 125), filed on June 26, 2018. Plaintiff filed his Notice of Defendant's Non-Opposition (ECF No. 127) on July 11, 2018. To date, Defendant has not filed a response to Plaintiff's Motion for Sanctions and the time for response has now expired.

**BACKGROUND**

Plaintiff requests sanctions against Defendant pursuant to Rule 37 of the Federal Rules of Civil Procedure for failing to comply with the Court's discovery order instructing her to amend her response to Plaintiff's Request for Production No. 45 in his fourth set of requests for production. On June 5, 2018, the Court granted Defendant's counsel's motion to withdraw and Defendant is now proceeding pro se. *See* ECF No. 122. On June 11, 2018, the Court granted in part, and denied, in part, Plaintiff's motion to compel and instructed Defendant to amend her response to Plaintiff's Request for Production No. 45 within fourteen days of the issuance of the order, to include a description of her inquiry to determine whether responsive documents exist. *See* ECF No. 123. Plaintiff represents that Defendant has failed to amend her response.

**DISCUSSION**

Rule 37(b) provides the court with a wide range of sanctions for a party's failure to adequately engage in discovery or comply with discovery orders. "Discovery sanctions serve the

1 objectives of discovery by correcting for the adverse effects of discovery violations and deterring  
2 future discovery violations from occurring.” *Taylor v. Illinois*, 484 U.S. 400, 425 (1988). The  
3 Court may exercise discretion in fashioning the appropriate sanctions for violations of a court  
4 order. *Official Airline Guides, Inc. v. Goss*, 6 F.3d 1385, 1396 (9th Cir.1993). *Von Brimer v.*  
5 *Whirlpool Corp.*, 536 F.2d 838, 844 (9th Cir.1976). The Court considers the objective of Rule  
6 16(f) to deter conduct that “unnecessarily consumes the Court's time and resources that could have  
7 been more productively utilized by litigants willing to follow the Court's procedures.” *Martin*  
8 *Family Trust*, 186 F.R.D. at 603.

9 Plaintiff seeks an order entering default judgment as a sanction. Because the sanction of  
10 default judgment is drastic, courts must weigh five factors before entering default: (1) the public's  
11 interest in expeditious resolution of litigation; (2) the court's need to manage its dockets; (3) the  
12 risk of prejudice to the party seeking sanctions; (4) the public policy favoring disposition of cases  
13 on their merits; and (5) the availability of less drastic sanctions.” *Henry v. Gill Indus., Inc.*, 983  
14 F.2d 943, 948 (9th Cir. 1993). “The first two of these factors favor the imposition of sanctions in  
15 most cases, while the fourth cuts against a ... dismissal sanction. Thus the key factors are prejudice  
16 and the availability of lesser sanctions.” *Id.*

17 Defendant failed to amend her response as instructed by the Court and failed to respond to  
18 Plaintiff's motion for sanctions. The Court, therefore, grants Plaintiff's motion for sanctions.  
19 Having balanced the five factors, the Court, however, declines to enter an order of default judgment  
20 against Defendant. Defendant must amend her response to Plaintiff's Request for Production No.  
21 45 to include a description of her inquiry to determine whether responsive documents exist as  
22 instructed in this Court's order no later than **August 3, 2018**. See ECF No. 123. Accordingly,

23 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Sanctions (ECF No. 125) is  
24 **granted**.


25 **IT IS FURTHER ORDERED** that Defendant must amend her response to Plaintiff's

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1 Request for Production No. 45 to include a description of her inquiry to determine whether  
2 responsive documents exist as instructed in this Court's order no later than **August 3, 2018**.

3 Dated this 20th day of July, 2018.

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6 GEORGE FOLEY, JR.  
7 UNITED STATES MAGISTRATE JUDGE  
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